

It is also noted that non-employee Union representatives have been held to have a right of access to an employer's property, in order for the union to properly carry out its duties as collective bargaining representative under the National Labor Relations Act. NLRB v. Holyoke Water Power Co., 778 F.2d 49 (1st Cir. 1985).

For the foregoing reasons, I conclude that Emery may not insist that the UMWA international representative sign a waiver prior to exercising § 103(f) rights.

Emery's policy also requires 24 hour advance notice before entry into a mine will be permitted. However, it is not necessary to explore this aspect of the case because the notice requirement clearly relates to entry under the terms of the wage agreement (UMWA Ex. 4). And the parties agree the terms of the wage contract are not an issue in the case.

The final issue centers on whether Emery may refuse entry to UMWA international representative Rabbitt merely because he was not designated by name in the filings made under 30 C.F.R. Part 40.

This issue was squarely addressed by the Commission in Consolidation Coal Company, 3 FMSHRC 617 (1981).

In the Consol case the inspection was requested by the safety committee of the UMWA local. The UMWA was the collective bargaining representative of the miners. The operator refused entry on the grounds that their names had not been submitted pursuant to 30 C.F.R. Part 40.

In considering the issue the Commission stated as follows:

We have previously recognized the important role section 103(f) plays in the overall enforcement scheme of the Act, both in assisting inspectors in their inspection tasks and in improving the safety awareness of miners, (Case cited) We are not prepared to restrict the rights afforded by that section absent a clear indication in the statutory language or legislative history of an intent to do so, or absent an appropriate limitation imposed by Secretarial regulation.

Neither the statute nor the legislative history indicates that prior identification of miners' representatives is a prerequisite to engaging in the section 103(f) walkaround right, and Part 40 on its face is silent as to the intended effects of a failure to file. The preamble to Part 40 does discuss, however, the intended effect of the filing regulations on walkaround participation. It states:

[I]t should be noted that miners and their representatives do not lose their statutory rights under section 103(f) by their failure to file as a representative of miners under this part.